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IN THE HIGH COURT OF JUDICATURE AT BILASPUR
(CHHATTISGARH)

Single Bench

SECOND APPEAL NO. 72 OF 2006

SECOND APPEAL UNDER SECTION 100 OF CODE OF CIVIL
PROCEDURE

APPELLANT
DEFENDANT NO.1

Municipal Corporation Durg
~~Commissioner~~, through Commissioner
Municipal Corporation,
Durg, Dist. Durg (C.G)

P.R. No. 338/06
Presented by Shri Anil Shrivastava
dated 10/2/06

VERSUS

RESPONDENT
PLAINTIFF

1. Smt. Vandana Shrivastava,
W/o Shri Anil Shrivastava,
Aged about 31 years, Lower
Division Clerk, Municipal
Corporation, Durg, District
Durg (Chhattisgarh)
2. State of Chhattisgarh
through Collector, Durg,
District Durg (Chhattisgarh)

Civil Suit for Declaration valued at RS. 300/-

Court Fee Affixed RS. 30/-

Second Appeal Valued At Rs. 300/-

Court Fee Affixed Rs. 30/-

SECOND APPEAL UNDER SECTION 100 OF CODE OF CIVIL
PROCEDURE

आदेश पत्रक

मामला क्रमांक S.A. No. 72/ 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>01.05.2006</u> Shri Sanjay K.Agrawal with Shri Saurabh Sharma, learned counsel for the appellant. Heard on admission. The Defendant No.1/Appellant-Municipal Corporation has preferred this Second Appeal against the concurrent findings of both the Courts below that the respondent/plaintiff was entitled for two advanced increment as per circular issued under Family Welfare Programme under the State. Case of the respondent/plaintiff before the trial Court was that the plaintiff is working as Lower Division Clerk with the Defendant No.1/Appellant - Municipal Corporation. Earlier, she was employed on daily wages from 09.09.85 to 30.06.88. Her services were regularized in the post of Lower Division Clerk on 01.07.1988 and since then she is being paid the salary and other benefits of the Lower Division Clerk. The respondent/plaintiff underwent Family Planning operation on 30.03.1997 after giving birth to two children and therefore as per Government rules, she is entitled for benefit of salary for the period from 09.09.85 to 30.06.88 and the respondent/plaintiff was further entitled for two advanced increments as per Family Welfare Scheme. It was also stated that the other employees were extended this benefit however, the respondent/plaintiff was denied despite several representation for the same. The defendant No.1/appellant, in his written statement has challenged the claim of the respondent/plaintiff on the ground that she was	

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आदेश पत्रक

मामला क्रमांक S.A. No. 72/सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	a daily wage employee for the period from 09.09.85 to 30.06.88 and therefore she was not entitled for the payment of difference of wages for that period for regular and daily wages employee. The suit filed by the respondent/plaintiff was barred by law of limitation as she has claimed two increments from the year 1985 to 1988 whereas the suit has been filed only on 14.06.95. The objection was also raised that the respondent/plaintiff has sought relief for declaration only and has not asked for any consequential relief and therefore the suit for declaration is not maintainable. Learned trial Court after framing issues and recording the statement of witnesses has partly decreed the suit of the respondent/plaintiff by recording a finding <i>inter alia</i> that only because the services of the plaintiff have been regularized as per Family Planning Scheme she cannot be denied from the claim of two advanced increments on the basis of the certificate and the plaintiff is entitled for two advanced increments with effect from 30.03.87. She is entitled to get the above increment added in her personal salary from 01.07.1988 and accordingly the suit was decreed. The Appellant/Defendant No.1-Municipal Corporation preferred an appeal against the order and the learned lower Appellate Court by the impugned judgment dismissed the appeal with cost and confirmed the judgment and decree passed by the trial Court. The appellant has preferred this appeal on the following substantial questions of law : i) <i>"Whether the Courts below were justified in holding the suit to be maintainable as the suit</i>	

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आदेश पत्रक

मामला क्रमांक

S.A. No. 72

सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<i>is for declaration simplicitor without seeking any consequential relief as required under the proviso to Section 34 of the Specific Relief Act?"</i> ii) <i>"Whether both the Courts below are justified in holding that the suit is not barred by limitation as the suit was filed for two advanced annual increments with effect from 09.09.85 to 30.06.88 and the suit was filed on 12.09.95?"</i> Learned counsel for the appellant submits that from the bare reading of the plaint it is evident that the relief is being claimed with effect from 1985 whereas the suit has been filed in the year 1995 i.e. 10 years after the date when the causes of action accrued to the plaintiff and as such the suit is barred by law of limitation. It is further argued that from the perusal of the relief claimed in the plaint, the plaintiff has claimed for declaration that she is entitled for the relief as per circular dated 29.01.1979 of the Government which is also applicable to the Corporation and other local bodies. However, no consequential relief in the terms of salary has been claimed and therefore the suit in the present form was not maintainable. I have heard learned counsel for the appellant. There is no dispute that the plaintiff was engaged as lower Division Clerk on 09.09.85 on daily wages. Her services were regularized with effect from 01.07.88 to the above post and since then she is drawing	

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आदेश पत्रक

मामला क्रमांक S.A. No. 12/1 सुन 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	regular salary and other benefits attached to the post. She underwent family planning operation after two children on 30.03.87 and vide circular dated 29.01.79 issued by the General Administration Department of the State, if the Government employee opts for Family Planning Operation after giving birth to two live children, such employee is entitled for two advanced increment from the date of sterilization and the above circular is applicable to Semi-Government and other aided organizations from the Government. Paragraph two of the circular mentions that the employees who have been employed on fixed wages were also entitled for benefit of increments in their salaries as and when they become entitled to the above increments and thus from the above circular it is clear that the plaintiff was entitled for two advanced increments and thus recurring cause of action arises to the plaintiff every year and therefore the question of limitation does not arise for the purpose of the instant suit. The other question of law that the suit for declaration simplicitor without seeking any consequential relief is not maintainable is concerned, the plaintiff has prayed for declaration that she is entitled for two advanced increments on account of sterilization operation as per Family Welfare Scheme of the Government. In the judgment of Supreme Court cited by the counsel for the appellant/defendant in the matter of <u>Rajasthan State Road Transport Corporation Vs. Shyam Biharilal Gupta</u> reported in <u>2005 AIR SCW 4579</u>, the suit of the plaintiff was decreed and his termination was held <i>ab initio</i> void.	

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आदेश पत्रक

मामला क्रमांक SA No. 72/ सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	The question for consideration before the Apex Court was whether the plaintiff of that case could claim for back wages from the date of termination and file execution for back wages on the strength of decree of declaration in his favour. The Apex Court held that in the absence of any consequential relief towards payment of monitory benefit in the terms of back wages, back wages from the date of termination to reinstatement could not be given to the plaintiff. However, from the judgment cited above, it cannot be held that the instant suit for declaration without prayer for consequential relief was not maintainable. On the basis of the aforesaid discussion, no substantial question of law as proposed by the appellant is made out for adjudication of the appeal. Thus, the appeal is devoid of merits and the same is accordingly dismissed at the motion stage itself.	Sd/- Dhirendra Mishra Judge

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